Cannon Boiler Works, Inc. *and* Aluminum, Brick and Glass Workers International Union, AFL–CIO–CLC. Cases 6–CA–22232 and 6–CA–22340

August 27, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND RAUDABAUGH

On November 19, 1990, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

We affirm the judge's finding that the parties reached a collective-bargaining agreement on July 10, 1989, when the Union accepted the Respondent's economic proposal.[2] In doing so, we reject the Respondent's argument that there was no meeting of the minds due to a mutual misunderstanding. The Respondent contends that it thought that the Union accepted all of its outstanding proposals, including the noneconomic ones. However, this is contrary to the judge's factual findings with respect to a July 10 telephonic conversation. In this regard, we rely on the judge's specific credibility resolution that noneconomic proposals on which agreement had not previously been reached were at that time withdrawn by both parties. Moreover, we also rely on the Respondent's failure to mention its interpretation of the conversation until the hearing, despite its spokesman's having proofread a version of the contract which, consistent with the credited testimony, lacked certain noneconomic company proposals. The case at hand is similar to *Cutter Laboratories*, 265 NLRB 577 (1982). In that case the Board rejected an administrative law judge's finding that there was no meeting of the minds due to mutual misunderstanding. The employer claimed that certain language must be in the contract in order to clarify a previous strike settlement. The Board found the meaning of a disputed element of the strike settlement to be unambiguous. The Board also noted that the employer had reduced the contract to writing in a form that did not contain the language in question. Likewise in this case the plain meaning of the July 10 telephonic communication and the Respondent's failure to raise its argument when it originally examined the written contract show there was no mutual misunderstanding.

We also find no merit in the Respondent's defenses for its repudiation of terms in the agreed-upon contract and its subsequent withdrawal of recognition. First, the Respondent contends that it was warranted in declaring on November 1 that the union-security provision in the agreed-upon contract was unlawful and that the term of the agreement should therefore be renegotiated because, following the parties' oral agreement to the terms of the contract, employees had expressed opposition to being represented by the Union. We find readily distinguishable a case relied upon by the Respondent in this regard, *R. Waldo, Inc*., 280 NLRB 1237 (1986). In *Waldo*, the Board found that an employer violated Section 8(a)(3) when it executed a bargaining agreement which contained a union-security clause when the parties knew the union lacked majority support. In that case, however, the parties knew when they agreed on the contract that the majority of the employees did not support the union, and that their execution of the renewal contract was itself unlawful. Unlike *Waldo*, in this case the contract is legitimate, having been negotiated during the extended certification year and at a time before any expression of employee discontent with the Union was evident. Therefore, we find no basis for finding that the union-security clause contained within this contract was in any respect unlawful.

Second, the Respondent attempts to excuse its withdrawal of recognition from the Union on the basis of a November 3 decertification petition. In support of the judge's finding that the decertification petition did not provide a legitimate excuse for the Respondent's withdrawal of recognition from the Union, we rely particularly on the fact that the November 3 decertification petition was effectively tainted by the Respondent's misconduct which commenced November 1, and that in any event the November 3 petition was barred by the contract which had become effective the previous July 31. It is immaterial that the contract did not take the form of a single, self-contained document. See *Television Station WVTV*, 250 NLRB 198 (1980).[3]

Finally we wish to make clear that the judge's finding of abrogation refers to the Respondent's attempts at renegotiating the ''union security'' and ''termination of agreement'' provisions. The judge did not find that the Respondent had discarded the entire contract, only that it had discarded portions of the contract to which it cited its opposition. We agree that this conduct was

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] All subsequent dates are in 1989.

[3] In addition to proposals initialed by both parties, the contract included an economic proposal made by the Respondent, and a July 14 letter signed by the Union confirming the agreement. While the Respondent did not sign or initial its economic proposal, the Respondent did refer to it in a November 1 letter which it signed.

inconsistent with the Respondent's bargaining obligations.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Cannon Boiler Works, Inc., New Kensington, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Suzanne C. McGinnis, Esq., for the General Counsel.
W. Kerby Bowling II, Esq., for the Employer.
Roy T. Albert, Esq., for the Union.

DECISION

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges were filed in the above cases on November 7 and December 22, 1989. A consolidated complaint issued on January 31, 1990. General Counsel alleges in the consolidated complaint that Respondent Employer has violated Sections 8(a)(1) and (5) and 8(d) of the National Labor Relations Act by failing and refusing since about November 1, 1989, to execute a written contract embodying the full and complete agreement previously reached by the parties on or about July 10, 1989, with respect to the terms and conditions of employment of its unit employees; by abrogating and refusing since about November 1, 1989, to abide by all the terms and conditions of this agreement by refusing to comply with the provisions pertaining to ''Union security'' and ''termination of agreement''; and by failing and refusing since about December 14, 1989, to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees.

Respondent Employer, in its answer to the consolidated complaint, denies violating the Act as alleged. Respondent admits that the parties on or about July 10, 1989, ''reached full and complete agreement with respect to terns and conditions of employment of the unit to be incorporated in a collective bargaining agreement.'' Respondent alleges, inter alia, that ''the written contract which the Union requested the Company to sign did not embody the agreement reached by the parties'' and, in addition, contained ''an illegal Union security provision''; that ''a valid decertification petition was filed with the Board'' about November 3, 1989, ''supported by a majority of the Company's employees'' ''and thereby relieved the Company from its duty to bargain or execute a execute the written contract presented to it by the Union . . . as it received notice prior to the written contract being presented to it that a majority of the bargaining unit employees no longer wished to be represented by the Union.''

A hearing was held on the issues raised in Pittsburgh, Pennsylvania, on May 31 and June 1, 1990. On the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

Respondent is an employer engaged in commerce and Charging Party Union is a labor organization as alleged. On September 8, 1987, the Union, following a Board-conducted representation election,[1] was certified as the exclusive bargaining agent of the following appropriate unit of Respondent's employees:

> All full time and regular part time production and maintenance employees including leadmen and field service personnel employed at the Respondent's New Kensington, Pennsylvania facility, excluding all salesmen, salaried employees, draftsmen and clerical employees, as well as guards, professional employees and supervisors as defined in the Act.

Roy T. Albert, executive assistant to the president of the Union, testified initially, by way of background, that the parties first met to negotiate a collective-bargaining contract in October 1987. They held some 25 to 30 bargaining sessions until March 1989. Albert generally described the Employer's conduct during this initial period of bargaining and noted that the Union, as a consequence of the Employer's conduct, filed 8(a)(1), (3), and (5) unfair labor practice charges against the Employer. General Counsel thereupon issued a complaint against the Employer in Case 6–CA–20802 and the matter was set down for hearing. On March 21, 1989, the parties executed a settlement agreement. (G.C. Exh. 2.) The Employer, as part of this settlement, agreed, inter alia, that it would not threaten employees with plant closure or relocation; withhold holiday pay or lay off employees because of their union membership and activities; lay off bargaining unit employees, announce a decision to deny the taking of employee vacations, increase wages or unilaterally make other changes in benefits and terms and conditions of employment; refuse to furnish the Union with certain requested relevant information necessary for collective bargaining; engage in conduct which evidences an intent not to reach agreement with the Union; and engage in dilatory tactics in arranging dates and locations for bargaining meetings. The Employer further agreed that it would on request bargain in good faith with the Union as the exclusive bargaining agent of the above unit employees and if an understanding is reached embody that understanding in a signed agreement; recognize the Union on resumption of bargaining in good faith until November 1, 1989, ''as if the initial year of certification had not expired''; furnish the Union with certain requested relevant information; and rescind a disciplinary warning to an employee and make whole two laid off employees. Albert recalled that a notice was posted pursuant to this settlement ''but it was posted for more than 60 days because it was defaced''; there was a ''30 day extension'' of the notice posting until about mid-June 1989.

Albert next testified that contract negotiations resumed about May 1989. During the previous sessions, Albert was chief negotiator for the Union and Rick Brown was chief negotiator for the Employer. On resumption of bargaining following the settlement, Albert remained chief negotiator for the Union and W. Kerby Bowling I or Sr. and W. Kerby Bowling II became the chief negotiators or spokespersons for the Employer. Albert recalled:

> [W]hat we [had] negotiated previous[ly] . . . which was initialled and dated . . . was not renegotiated . . .

[1] The Union won the Board-conducted representation election by a vote of 26 for and 6 against union representation. See Tr. p. 267.

> with an agreement between us that it would not be renegotiated. The Bowlings . . . and [Albert] [agreed] that it would not be renegotiated and we'd only be talking about other things that was outstanding at that point in time. . . . [W]hen we entered negotiations it was again reaffirmed that things that were discussed and agreed [upon], signed off or initialled rather, would not be renegotiated.

Albert recalled that he and the Bowlings ''consistently'' followed this ''procedure of initialling agreed upon provisions'' and ''you don't go back and renegotiate it.'' Albert identified General Counsel's Exhibit 4 as memorializing the initialed, signed off, and agreed-upon items.

According to Albert, the ''outstanding issues'' upon resumption of bargaining included ''union shop and management's rights''; ''hours and overtime''; ''vacations''; ''holidays''; and ''wage increases.'' The parties thereafter met during some ten to fifteen sessions; ''agreed on management's rights . . . union shop . . . hours and overtime''; and Bowling Sr. submitted a written proposal on May 23 or 24, 1989, containing the Employer's ''economic package.'' (G.C. Exh. 3.) Albert testified:

> It was the first, final and last [economic] proposal [of the Employer]. . . . I attempted to negotiate from this proposal and each time I attempted I was told that's the first, the final and the last.

Albert recalled that ''even after our last negotiations of June 21, 1989, [I] tried to . . . get some more money in terms of wages and was told again . . . that it [G.C. Exh. 3] was the first, final and last proposal, and that was it.''

Albert explained that General Counsel's Exhibit 3 contains, inter alia, three economic proposals or options. Proposal one provides for a one year agreement, a 5-cent hourly wage increase, and the employees assuming the increased costs of the hospital/medical/surgical insurance. Proposal one also states that ''benefits remain at current level.'' The ''figure'' which the Employer provided to the Union for the increased costs of this insurance ''would have exceeded the . . . nickel increase . . . .'' Consequently, if the Union accepted this proposal, ''the employees would have had a concessionary contract.'' Albert added:

> Option 2 was . . . a two year agreement which would provide for the employees to pay half of the increased [insurance] costs which . . . would also be concessionary. And, option 3 was a three year agreement which would provide a nickel an hour [increase] in each year of the contract with no sharing of the increased costs of insurance.[2]

Albert called a meeting of the union membership for July 8, 1989, to discuss and vote upon this Employer proposal. Albert then explained to the members the three options and ''everybody agreed that what they would be voting on would be option 3, which would be a three year agreement with no sharing of the . . . increased costs . . . in health care . . . .'' Albert also explained that ''all the noneconomic parts would be resolved . . . there was nothing major that was outstanding there.'' And, Albert

> told everybody at the meeting . . . several times . . . that it must take a majority of votes to approve a contract [and] it must take two-thirds to strike [and, consequently,] if you did not get two-thirds of the vote to strike then you automatically accepted the contract; . . . they understood by voting against a strike they were voting for approval of this proposal [that is, G.C. Exh. 3 and its third option in addition to what had already been agreed upon or signed off].

Two-thirds of the membership at the July 8 meeting did not vote in favor of a strike. Albert then announced to the membership that ''the criteria of two-thirds was not met, we now have a three year agreement and I will inform the Company of that agreement.''

Thereafter, on July 10, 1989, Albert telephoned Bowling II and

> told Kerby [Bowling II] that we had a meeting . . . we had a three year agreement . . . any noneconomic items that were unsettled go away [they are withdrawn] . . . we have a contract based on the signed off items and the third option . . . .[3]

Albert ''suggested to [Bowling II] that he type the contract.'' Bowling II said that he was ''extremely busy.'' Albert responded that he too had a ''very crowded schedule'' but he would ''do it,'' however, ''it's going to take some time.''

Albert further recalled that during his July 10 telephone discussion with Bowling II he asked ''if we could go back to July 1st'' for the starting term of the agreement. Bowling II ''was not interested in making that retroactive to July 1st and [wanted to] go to July 31st.'' Albert ''said okay.'' The term of the contract would be three years from July 31, 1989. The agreement also included a union-security clause. Albert said to Bowling II that ''I'll send you the dues deduction cards'' and Bowling II replied: ''send them to Rick Brown,'' the Employer's general sales manager and former chief negotiator.

Albert wrote Bowling II on July 14, as follows (Jt. Exh. 2):

> In accordance with our phone conversation . . . this is to confirm that the 3 year agreement which has been reached by the parties will be effective beginning July 31, 1989 and continu[e] under the terms of the agreement until midnight of August 1, 1992. By separate cover I am sending to . . . Rick Brown membership application cards for dues deduction[s] as noted in our contractual agreement. I would expect to be notified immediately of any employee who fails to authorize dues deductions as provided under the terms of our agreement.
>
> The contract will be prepared for signatures at a later date. However, the enforcement of such provisions is

[2] Proposals two and three also provide that ''benefits remain at current level.'' See G.C. Exh. 3.

[3] It is undisputed that ratification of the agreement by the employees was not a condition precedent to the existence of a contract. See Tr. pp. 61 and 143. It is also undisputed, as discussed below, that the effective date of the agreement was not conditioned upon formal execution of a written contract. See Tr. p. 74.

> now in effect and the agreements reached by the parties [have] been announced prior to the date of this letter and are enforceable. I will expect the Company and the employees[’] Union will abide by such provisions.

A copy of this letter, with dues-deduction cards enclosed, was sent to Brown.

Albert recalled that Brown telephoned him about 1 week later and asked: ‘‘[D]o I sign these people up now without an agreement that’s actually signed?’’ Albert explained that ‘‘we got an agreement and you go on and sign them up.’’ Brown replied that ‘‘under the Union shop clause we have a 30 day grace period . . . after the agreement’’ and Albert again explained: ‘‘start now because we got an agreement.’’ Albert emphasized:

> we had a clear understanding that the effective date of that contract was July 31. It was very clear that we had a contract.

There were, as Joint Exhibit 1 shows, 31 persons employed by Respondent as of August 23, 1989, ‘‘the date when dues authorization cards were distributed to and collected from employees.’’ Eight employees, as shown in Joint Exhibit 7, signed such cards. The Employer did not notify Albert ‘‘of any employees who did not sign dues deduction’’ cards. The Employer did not remit any dues to the Union. Albert first became aware of this failure to remit dues on the part of the Employer about December. The Employer had never indicated to Albert that ‘‘it did not agree to remit dues.’’ The Employer, however, had implemented all other terms and provisions which had been agreed upon on July 10, including the 5-cent pay increase, holidays, job bidding, and seniority provisions.

In the meantime, following the July 10 agreement, as Albert further testified, Albert set about preparing the written contract. He ‘‘used the documents . . . initialed by both parties’’ (G.C. Exh. 4) and the Employer’s ‘‘first, final and last economic proposal’’ (G.C. Exh. 3). He noted: ‘‘we agreed upon the insurance remaining the same [and he] made reference to the insurance booklets that [were] supplied to [him] by the Company . . . because we had agreed to the same plans.’’ He further noted that with respect to provisions pertaining to ‘‘holidays,’’ the holidays reflected in General Counsel’s Exhibit 3 are the ‘‘same holidays that they had in effect’’ and they too were ‘‘agreed to in negotiations.’’

Thereafter, on October 11, 1989, Albert sent Bowling II the following letter (Jt. Exh. 3):

> Enclosed you will find a signed copy of the agreement between Cannon Boiler Works, Inc. and our Union.
>
> I have attempted to reach you by phone to discuss the carry-over provisions for employees regarding hospitalization-medical-surgical-life insurance-accident and sickness. These provisions are noted in articles XXXV and XXXVI . . . . I have left section 5 of article XXXV a blank space for the current practice be noted. Also in article XXXVI Sections 2, 3 and 4 there also appears blank spaces to be filled in. Please fill in the proper practice so the contract will reflect the same.
>
> I would appreciate you signing the enclosed documents and returning them to me as soon a possible and not later than 10 days from the above date.

On November 1, 1989, Bowling II replied to Albert, listing ‘‘certain errors made in [the] reduction and printing’’ of the contract, and requesting that Albert make the ‘‘appropriate changes’’ or ‘‘indicate [his] position.’’ (See J. Exh. 4, items 1 through 13.) Bowling II, however, also stated in this letter:

> Concerning article V—Union security: since we last met in June of this year the NLRB and the Company have received notice that a majority of employees in the bargaining unit no longer desire to be represented by the Union. This being the case it is clear that execution of the agreement containing the Union security provision as previously agreed to would violate Sections 8(a)(2), (3) and 8(b)(2) of the Act. . . . In view of this I suggest that we work out some other language . . . regarding Union dues . . . . Likewise, in view of the Union’s 1088 of majority support, the Company feels that it would be inequitable and contrary to the express desire of a majority of our employees to execute a three year agreement. Thus, we propose that [the termination date] be ‘‘the 31st day of July 1990.’’

Albert noted in his testimony that from July 10, when agreement was reached, until about November 1, when he received the above letter from Bowling II, the Employer had not questioned the existence of an agreement between the parties.

On November 21, 1989, Albert responded to Bowling II’s November 1 letter. (Cf. Jt. Exhs. 5 and 4.) In item 1 of his November 21 letter, Albert agreed to change the language ‘‘Management Clause’’ to ‘‘Management Rights.’’ In item 2, Albert agreed that the language quoted in Bowling II’s letter pertaining to the time for filing grievances was omitted by ‘‘oversight.’’ In item 3, Albert stated:

> A three year agreement was agreed upon between the parties . . . . Your suggestion to change the contract term from three to one year is hereby rejected.

In item 4, Albert agreed to delete section 14 on hours and overtime as a ‘‘duplicate.’’ In item 5, Albert agreed that section 10 on seniority is also a ‘‘duplicate’’; however, Albert noted that the quoted sections 11, 12, and 13 should be ‘‘added to article XIII [on seniority] since they have been agreed upon.’’ Albert attached initialed and dated copies of the draft in support of this claim. In item 6, Albert agreed to a correction of a ‘‘typo’’ in the word ‘‘from.’’ In item 7, Albert disputed Bowling II’s assertion that ‘‘the last paragraph of section 2’’ in article XV pertaining to layoff and recall ‘‘was not agreed to and should be deleted.’’ Albert explained that the ‘‘last paragraph of section 2 has been agreed upon’’ and therefore ‘‘remains.’’ Here too Albert attached initialed and dated copies of the draft in support of this claim. In item 8, Albert agreed that Bowling II’s cited section 11 pertaining to safety and health is ‘‘correct’’ and was omitted by ‘‘oversight.’’

Albert next addressed in his November 21 letter to Bowling II the latter’s November 1 comments about contract lan-

guage pertaining to holidays in article XXXIII, vacations in article XXXIV, hospitalization insurance in article XXXV, life insurance in article XXXVI and retirement. In item 9, Bowling II wrote on November 1 that section 1 should list the specified holidays and section 8 is a ''duplicate'' ''with modified language.'' Albert agreed, noting that ''this section reflects the holidays that were in existence in 1989 . . . in accordance with your November 1, 1989 correspondence'' and section 8 is ''hereby deleted'' as a ''duplicate.'' In item 10, Bowling II wrote on November 1 that section 1 pertaining to vacations should read as stated in his letter. Albert responded that he ''agreed with section 1 as written in your November 1 correspondence.'' Albert added:

The vacation language and schedule noted in the agreement reflects exactly the vacation program that was supplied to the Union (see attached no. 3). I had attempted to reach you by phone regarding matters and you failed to return my phone call prior to October 11 . . . . I have no problem with your vacation schedule up to 24 months but I do insist [that you add on the 11 to 20 year schedules as set forth] . . . .

In item 11 of Bowling II's November 1 letter, Bowling II stated:

> the Company's final proposal on the three year option was that current benefits would remain the same . . . therefore I propose . . . the following language . . .
>
> Throughout the term of this agreement the Company will continue to make available to the employees the group insurance coverage in effect as of the date of this agreement. . . . An exhibit showing an outline of group insurance coverage will be attached to this agreement.

On November 21, Albert ''agree[d] to'' Bowling II's ''suggested language.''

In item 11 of Bowling II's November 1 letter, Bowling II further set forth section 1 and 2 language on retirement, as follows:

> The Company will continue to make available to employees the retirement plan in effect as of the date of this agreement . . . . An outline of the retirement plan shall be listed in this agreement as an exhibit.

Albert, in his letter of November 21, noted that his section 1 ''reflects the actual amount of insurance that we agreed upon and was the exact amount in effect''; his sections 2, 3, and 4 pertain to ''carryover and I requested you to fill in the time period'' which ''should meet with your approval''; ''it was agreed that the retirement plan would remain unchanged''; and therefore Bowling II's section 1 and 2, as quoted, ''was agreed by the parties.''[4]

Bowling II also wrote in his November 1 letter to Albert that ''schedule A'' of Albert's contract pertaining to wage rates effective August 1 ''should be changed to exhibit A'' and the ''first paragraph should be deleted.'' Bowling II noted that the ''proper rates are attached.'' Albert responded on November 21 that the ''wage rates you listed are OK.''[5] Finally, Bowling II wrote in his November 1 letter to Albert that he ''re-did'' ''exhibit B'' pertaining to overtime because of ''so many inconsistencies.'' Albert replied on November 21 that ''you have made changes that were not agreed to'' and the ''agreement is noted by attachment no. 4.''

Thereafter, on December 14, 1989, Bowling II wrote Albert (Jt. Exh. 6):

> I apologize for this late response to your November 21 . . . letter . . . . As you are aware a decertification petition was filed by a majority of . . . unit employees.

[4] Albert was generally asked ''where did [he] get the language that makes up art. XXXV'' in Jt. Exh. 3, his contract language pertaining to medical insurance, and he responded: ''I got that from the Employer's handbooks and insurance books that they supplied to me''; ''they were . . . handbooks of existing benefits.'' See G.C. Exh. 5, the Blue Cross booklet provided by the Employer. Albert also cited and relied on G.C. Exh. 6, the document which he had received from the Employer ''that set forth the various conditions that they had prior to the Union coming in and was still in existence throughout the negotiations.'' See also G.C. Exh. 7 (the Employer's existing profit sharing plan); G.C. Exh. 8 (the Employer's group insurance benefits); G.C. Exh. 9 (the Employer's group dental program); and G.C. Exh. 10 (the Employer's Blue Shield eye program).

On cross examination, Albert was questioned at length about where he got specific language which he used in his articles XXXV through XXXVIII (Jt. Exh. 3). Albert candidly acknowledged that certain specific language ''wasn't signed off, but it certainly was agreed to . . . we agreed to the same insurance benefits that was in existence at the time we negotiated the contract . . . . And, Albert also explained, as he had in his letter to Bowling II on October 11 (Jt. Exh. 3), that he had left a ''blank space'' in sec. 5 of his agreement dealing with insurance ''carry over provisions'' for the Employer to fill in its ''current practice.'' Albert recalled: ''When we negotiated [the agreement] it was the same thing you had in effect [and] I didn't know whether you had a carry over or not.'' In addition, Albert candidly acknowledged on cross-examination that some of his attempted statements and restatements of the Employer's terms and conditions of employment and existing benefits contained ''mistakes'' or were included by ''mistake'' and these ''mistakes,'' having been ''called to [his] attention now,'' concededly ''should not have been included'' in his typed contract. See, for example, Tr. pp. 116–117, 120–121, 124–126, 129–130, 132–134, 137, and 139. Albert agreed, for example, ''that [one disputed item] was never called to my attention . . . if it was an error . . . I certainly would not'' have included [the item].

On redirect examination, Albert again explained that ''as to all of the insurance provisions—hospital, medical, surgical, life and dental—the agreement was . . . whatever the Company has existing is the contract.''

Sharette Ciccocioppo, the Employer's payroll and accounting clerk, asserted in her testimony that the Employer does not have ''a written policy regarding continuation of paid-for insurance benefits'' for employees; that the Employer's unwritten ''practice'' is that ''employees that are on coverage are continued on coverage until they are terminated'' and ''if there is a layoff or something like that . . . the employees would be kept on till the end of the month . . . it would be the determination of Art Skelley [the sole owner of Respondent] whether the Employer would continue coverage after that . . .''; and that therefore she would be unable to ''fill in'' the ''blank spaces'' in Albert's contract, Jt. Exh. 3. She assertedly could not fill in the ''blank spaces'' ''because we do not have a policy of how many months an employee can stay on after layoff. See Tr. pp. 206–209.

Arthur Skelley, the sole owner of Respondent those testimony is summarized at length below, asserted that the ''Company Policy Manual'' (G.C. Exh. 6), relied on by Albert in preparing his contract (Jt. Exh. 3), does not state the Company's ''complete vacation policy'' and therefore does not ''basically state the correct policy.'' Skelley also asserted that the Employer does not have ''a written policy . . . concerning the continuation of the Company's contribution towards insurance premiums if an employee is not at work'' and consequently he would decide ''how long we can afford to continue [an employee's] coverage.'' On cross-examination, Skelley acknowledged that he ''never'' told the Union about his ''policy'' on carrying over benefits. He claimed that the Union ''never asked.'' He also claimed the ''I don't think we ever'' told the Union about his ''vacation policy.''

[5] Albert also noted in his November 21 letter that the rate for one Richard Smith is contrary to a June 20 document and no change in his rate was negotiated; it was not agreed that the names of employees and their wage rates would be a part of the agreement; ''exhibit A'' should also provide for the August 1990 and August 1991 nickel wage increases; and a footnote should provide that ''no employee shall receive wages less than the wage rate they received at the time this agreement was consummated.''

> It goes without saying that until the representation question is resolved negotiations must be tolled . . . .

Arthur P. Skelley is the sole owner of Respondent. Skelley acknowledged that he had distributed union dues deduction authorizations to the employees in August 1989; that he did not thereafter remit to the Union the deducted dues for those employees who had executed the authorizations; that he did not return these deducted dues to the employees; and that these deducted dues ''are in our payroll account at work.'' Skelley identified G.C. Exh. 12, a letter to counsel for General Counsel dated January 2, 1990, enclosing a ''petition received by [the Employer] and relied upon by it in drafting its November 1, 1989 response to the Union's demand to sign the collective bargaining agreement.'' The enclosed petition, purportedly signed by ''the overwhelming majority of employees in the bargaining unit'' who ''no longer want'' the Union ''to represent us,'' is dated July 19, 1989, during the extended certification year. See Tr. p. 151.[6]

Skelley next testified that he made the decision ''not to sign the collective-bargaining agreement as submitted by the Union'' because

> [F]irst . . . it was not a complete document . . . . Second . . . sometime in July we received a letter from the employees stating that they no longer wished to have the Union represent them [R. Exh. 12] . . . [and] shortly after that, when we passed out the dues authorization cards, we had only six or seven or eight people out of the whole group authorize us to withhold dues . . . [and] with the fact that there was a Union security clause in the agreement it was my concern that . . . if the other people chose not to sign the dues authorization cards the Company was obligated to discharge them [and] I wouldn't have had a Company . . . .

Skelley acknowledged on cross examination that when he ''distributed'' the union dues authorization cards to the unit employees as required by the agreement he ''told them . . . that it was not our obligation to force them to sign . . . it was their choice.'' Elsewhere, Skelley claimed that he told the unit employees when he distributed to them the union dues authorization cards ''that we would be obligated to discharge them'' if they did not execute the cards.

Skelley next cited the second petition from the employees dated November 2, 1989 (R. Exh. 13), in support of his ''decision'' ''not to continue to recognize the Union.'' However, elsewhere in his testimony, Skelley acknowledged that about this same time he also had ''decide[d] to change the termination date of the agreement or make a proposal to change the termination date'' from a 3-year to a 1-year term contract and ''remove the Union security clause.'' And, elsewhere in his testimony, Skelley claimed that he had decided to make the above proposals to the Union to modify the agreement ''before'' he had received the second withdrawal or disavowal letter from the employees.

Rick Brown, sales manager for Respondent and its chief negotiator during the initial September 1987 to March 1989 negotiations, testified that he continued to act from March 1989 as an ''observer'' for the Employer at the subsequent negotiations with the Union; that Respondent's Exhibit 2 contains initialed or signed proposals and is a ''working copy of the Company's agreement''; and that ''if both parties initialed [a paragraph] . . . all parties agreed to that section . . . .'' Brown then identified Respondent's Exhibit 3 as ''part of the economic proposal which we put on the table on the morning of June 21.'' Respondent's Exhibit 3 is entitled ''Proposed 6-21-89'' and purportedly refers in outline form to economic and noneconomic proposals of the parties. Counsel for Respondent argued that Respondent's Exhibit 3 and related documents (R. Exhs. 4 through 11 which are generally referred to or referenced in R. Exh. 3) show ''exactly what the Company's final proposal was on the last day of negotiations'' and ''was agreed to by the parties when Albert accepted the Company's last proposal.'' (See Tr. p. 174.) Brown testified that he later reviewed the ''agreement sent to the Company by Albert,'' compared that ''agreement'' with Respondent's Exhibits 2 through 11, and in his ''opinion'' Albert's ''contract was not what we agreed to.''[7]

Finally, W. Kerby Bowling II testified. As noted, he is an attorney for Respondent. He asserted that, in ''the conversation that took place with Albert [on July 10, 1989] in which [Albert] called to accept the Company's agreement, [Albert] told me [Bowling II] that he accepted our proposal. There was no discussion concerning noneconomic language, about the removal of it [as claimed by Albert]. He said he accepted our proposal. I never agreed to delete any of our noneconomic language from our last proposal.'' On cross-examination, Bowling II acknowledged that during the ''investigation of these unfair labor practice charges [he had] never raised an issue as to what was said in that conversation before today'' and ''before this date [he had] never raised an issue about [the noneconomic] successor clauses [or] successorship language'' which he apparently now claimed supported the contention that Albert's contract did not reflect the agreement reached.

Albert was recalled as a rebuttal witness. Albert again explained (Tr. p. 260):

> [W]hen I [Albert] called you [Bowling II] on July 10 you agreed with me that all the articles that [were] initialed and dated would be the contract in addition to the option for the three years for the economics [and] all other noneconomics, both Company and Union, would go away . . . . [A]nything that was on the table that was not resolved would go away, would be withdrawn by both parties . . . .

[6] Thomas Roddy, an employee of Respondent, identified R. Exh. 12 as a petition which he had prepared on or about July 19, 1989. Roddy, whose testimony is not too clear, apparently had witnessed employees sign this petition. Roddy testified that the Regional Director of the Board subsequently refused to accept this petition because the certification year ''was extended'' to November 1, as stated above. Thereafter, on or about November 2, Roddy again prepared another petition, R. Exh. 13. Roddy assertedly had witnessed 20 employees sign this petition. Roddy's testimony concerning the events attending the preparation and transmission of this second petition is also not entirely clear. The Director dismissed this second petition because of the pending unfair labor practice proceedings. See R. Exh. 14.

Sharette Ciccocioppo, the Employer's payroll and accounting clerk, testified that as of pay period ending July 23, 1989, there were 31 unit employees and as of pay period ending November 12, 1989, there were 27 unit employees.

[7] On cross-examination Brown acknowledged that he did not know when proposal R. Exh. 5, referred to in R. Exh. 3, was ''submitted''; that the ''other proposals,'' R. Exhs. 6 through 10, ''were not attached'' to R. Exh. 3 on June 21; and that the so-called ''first and final'' ''economic proposal'' of the Employer, R. Exh. 7, which was ''submitted on May 24 and is referred to in R. Exh. 3, provided that ''existing benefits would remain the same.''

Albert noted that there were then ''very few'' noneconomic items on the table, namely language for a successor clause and complete agreement clause, and these items were withdrawn.

I credit the testimony of Albert as detailed above. His testimony is corroborated in large part by undisputed documentary evidence of record. His testimony is also substantiated in significant part by admissions and acknowledgements of Respondent's witnesses. And, relying on demeanor, he impressed me as a reliable and trustworthy witness. In sum, the testimony of Albert together with the undisputed documentary evidence restated above present here a complete and reliable recitation of the pertinent sequence of events. On the other hand, I was not impressed with the testimony of Bowling II, Skelley, Brown, Ciccocioppo, and Roddy. Their testimony was at times vague, incomplete, contradictory, unclear, and evasive. I find, for example, Bowling II's belated and eschewed assertion that, in effect, Albert had accepted the Employer's pending noneconomic proposals, including successorship and complete agreement language, to be clearly contrary to the credible and undisputed documentary evidence of record. Bowling II never credibly explained why this significant assertion had not been previously made by him. I find equally incredible and unreliable Brown's related assertion to the effect that Albert's written contract did not in fact reflect the agreement of the parties. In like vein, I find incredible and unreliable the related assertions by Skelley and Ciccocioppo that, in effect, Albert's written contract ''was not a complete document.''

As discussed more fully below, I am instead persuaded here that the parties had reached a complete agreement as to all terms and conditions of employment and Albert's written contract sufficiently embodied those agreed-upon terms and conditions of employment. I find and conclude that the cited mistakes or omissions in this written contract did not prevent or preclude the existence of agreement; the cited mistakes or omissions, when sufficiently called to Albert's attention, were readily acknowledged and resolved by the parties and by-and-large pertained to stating or restating existing terms or relatively inconsequential matters; and Bowling II, Skelley and Brown have seized on these cited mistakes or omissions, often belatedly, in an attempt to evade further the Employer's outstanding bargaining obligation.

Discussion

Section 8(a)(5) of the National Labor Relations Act makes it an unfair labor practice for an employer ''to refuse to bargain collectively with the representative of his employees . . . .'' Section 8(d) of the Act explains that ''to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party . . . .'' It is settled law that when an oral agreement is reached as to the terms of a collective-bargaining contract, each party is obligated, at the request of the other, to execute that contract when reduced to writing, and a failure or refusal to do so constitutes a violation of Section 8(a)(5) and (1) of the Act. Moreover, as the Board explained in *Fashion Furniture Mfg.*, 279 NLRB 705 (1986):

> Turning to the issue of whether the errors contained in the written contract justify the respondent's refusal to execute it, we note that generally inadvertent errors do not excuse a complete refusal to execute an agreement previously reached . . . . The Board has found that such errors do not indicate a lack of agreement between the parties and the need for minor alterations in the agreement does not relieve the parties of the obligation to execute the contract agreed to particularly where as here the other party indicates a willingness to make such alterations . . . . [Citations omitted.]

Further, as the Board also made clear in *Georgia Kraft Co.*, 258 NLRB 908 (1981), enfd. 696 F.2d 931 (11th Cir. 1983),

> Respondent was clearly obligated to assist the union in reducing the agreement to writing and to thereupon execute such agreement. . . . A review of this document reflects some minor deviation from the proposals submitted by respondent and agreed to by the union . . . . We nonetheless conclude that any such deviation is not indicative of a lack of agreement between the parties, but is rather the result of respondent's own refusal to acknowledge the existence of an agreement as well as its refusal to assist the union in reducing the agreement to writing . . . .

Cf. *Interprint Co.*, 273 NLRB 1863 (1985), and *Magic Chef*, 288 NLRB 2 fn. 1 (1988).

In addition, as restated in *Viking Connectors Co.*, 297 NLRB 95 (1989),

> The Board has long held that an irrebutable presumption of continuing majority status on the behalf of a certified union continues throughout the certification year. Thereafter, a labor organization enjoys a rebuttable presumption of continuing majority which may be challenged by an employer in certain circumstances . . . . An important limitation to an employer's ability to withdraw recognition from a union however is that such action must occur in a context free from unfair labor practices.

And, in *United Supermarkets*, 287 NLRB 119 (1987), enfd. 862 F.2d 549 (5th Cir. 1989), the Board stated:

> Although it is true that the respondent delayed formally withdrawing recognition from the union until the certification year expired, it is also true that the respondent relied in part on [a] prematurely filed petition to support its withdrawal. We believe that just as the petition could not raise a question concerning representation nor be acted on by the respondent within the certification year, respondent cannot subsequently rely on it to justify a more timely withdrawal of recognition. . . . More significant, however, than the untimeliness of the decertification petition is the fact that the underlying expression of support was itself unreliable as an indicator of uncoerced employee sentiment because it arose during the time when respondent not yet fully remedied its many unfair labor practices . . . .

Applying these principles of law to the credited evidence of record, I find and conclude that Respondent Employer has violated Sections 8(a)(1) and (5) and 8(d) of the National Labor Relations Act as alleged by failing and refusing since about November 1, 1989, to execute a written contract embodying the full and complete agreement previously reached by the parties on or about July 10, 1989; by abrogating and refusing since about November 1, 1989, to abide by all the terms and conditions of this agreement by refusing to comply with the provisions pertaining to ''Union security'' and ''termination of agreement''; and by failing and refusing since about December 14, 1989, to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees.

The Union won a Board-conducted representation election by a vote of 26 for and 6 against union representation and, on September 8, 1987, was certified as bargaining agent for the Employer's production and maintenance unit employees. The parties held some 25 to 30 bargaining sessions from October 1987 until March 1989. The Union then charged the Employer with refusing to bargain in good faith and discrimination. An unfair labor practice complaint issued. Respondent agreed on March 21, 1989, in settlement of the pending proceeding that, inter alia, it would bargain in good faith with the Union as the exclusive bargaining agent of the unit employees; if an understanding is reached embody that understanding in a signed agreement; and extend the certification year until November 1, 1989. The parties resumed bargaining in May 1989. According to the credible testimony of Union Representative Albert, the parties agreed:

> what we [had] negotiated previous[ly] . . . which was initialed and dated . . . was not renegotiated . . . with an agreement between us that it would not be renegotiated. The Bowlings [the Employer's attorneys] . . . and [Albert] [agreed] that it would not be renegotiated and we'd only be talking about other things that was outstanding at that point in time.

The ''outstanding issues'' on resumption of bargaining included ''union shop and management's rights''; ''hours and overtime''; ''vacations''; ''holidays''; and ''wage increases.''

The parties thereafter met during some 10 to 15 sessions; ''agreed on management's rights . . . union shop . . . hours and overtime''; and Bowling Sr. submitted a written proposal on May 23 or 24, 1989, containing the Employer's ''first, final and last'' ''economic package.'' (See G.C. Exh. 3.) When Albert ''attempted to negotiate from this [economic] proposal'' he was told ''that's the first, the final and the last.'' Two of the three economic options contained in this proposal, as demonstrated above, would result in a regressive or concessionary contract. The Union accepted the Employer's ''third option'' in addition to what had already been agreed on and initialed. Thereafter, on July 10, 1989, Albert telephoned Bowling II and

> told Kerby [Bowling II] that we had a meeting . . . we had a three year agreement . . . any noneconomic items that were unsettled go away [they are withdrawn] . . . we have a contract based on the signed off items [G.C. Exh. 4] and the third option [G.C. Exh. 3] . . . . The term of the contract would be 3 years from July 31, 1989. The agreement included a union-security clause.

The parties on July 10, 1989, fully understood that they had negotiated a complete collective-bargaining agreement. They fully understood that any noneconomic items remaining on the bargaining table were withdrawn. They fully understood that the agreement, including its union-security and 3-year term clauses, were effective as of July 31, 1989. And, the parties proceeded to implement this oral agreement. Albert then asked Bowling II if he would ''type'' the agreement. Bowling II refused because he was ''extremely busy.'' Albert then set about typing the agreement. Albert ''used the documents . . . initialed by both parties'' (G.C. Exh. 4) and the Employer's ''first, final and last economic proposal'' (G.C. Exh. 3). He noted: ''we agreed upon the insurance remaining the same [and he] made reference to the insurance booklets that [were] supplied to [him] by the Company . . . because we had agreed to the same plans . . . .'' He further noted that with respect to provisions pertaining to ''holidays,'' the holidays reflected in General Counsel Exhbit 3 are the ''same holidays that they had in effect'' and they too were ''agreed to in negotiations.''

In the meantime, during August 1989, owner Skelley distributed union dues deduction authorizations to the employees. Skelley acknowledged on cross-examination that when he ''distributed'' the union dues authorization cards to the unit employees as required by the agreement he ''told them . . . that it was not our obligation to force them to sign . . . it was their choice.'' Only 8 out of some 31 employees signed the authorizations. Skelley acknowledged that he did not thereafter remit to the Union the deducted dues for those employees who had executed the authorizations; that he did not return these deducted dues to the employees; and that these deducted dues ''are in our payroll account at work.''

Albert, however, was unaware of the Employer's failure to comply with the union-security clause previously agreed on by the parties. The Employer did not notify Albert ''of any employees who did not sign dues deduction'' cards. The Employer did not remit any dues to the Union. Albert first became aware of this failure to remit dues on the part of the Employer about December. The Employer had never indicated to Albert that ''it did not agree to remit dues.'' The Employer, however, had implemented all other terms and provisions which had been agreed on on July 10, including the 5-cent pay increase, holidays, job bidding, and seniority provisions.

Albert, by October 11, 1989, had finished his preparation of the written contract. Albert had attempted unsuccessfully to telephone Bowling II and get his assistance with respect to stating or restating certain terms and conditions of employment or benefits. On October 11 Albert mailed a copy of the written contract to Bowling II with a request that Bowling II fill in certain information reflecting the Employer's existing practice regarding the continuation or carry over of insurance coverage after employment ended. On November 1, Bowling II responded to Albert citing certain errors in Albert's written contract. In addition, Bowling II—relying on an employee petition filed during July 1989 within the extended certification year—questioned the majority status of the Union and, at the same time, attempted to renege on and renegotiate the agreed-upon union-security clause and termination of agreement language.

Albert, by letter dated November 21, 1989, replied to Bowling II's letter of November 1. Albert attempted to resolve in detail all cited errors or mistakes or demonstrate that the typed contract in fact reflected the agreement of the parties. (See Jt. Exhs. 4 and 5, as summarized supra.) Albert, however, refused to change the agreed-upon term of the contract or union-security clause.

Bowling II never replied to Albert's November 21 attempt to resolve all cited errors or mistakes. Instead, Bowling II, on December 14, 1989, relying on another employee petition filed on November 3, notified Albert:

> I apologize for this late response to your November 21 . . . letter . . . . As you are aware a decertification petition was filed by a majority of . . . unit employees. It goes without saying that until the representation question is resolved negotiations must be tolled . . . .

Approximately 6 months later, at the instant unfair labor practice hearings, Bowling II first cited additional errors in Albert's written contract and questioned Albert at length about these cited errors and the ones previously cited in November. Albert credibly testified that he ''got [his contract language pertaining to insurance benefits] from the Employer's handbooks and insurance books that they supplied to me''; ''they were . . . handbooks of existing benefits.'' Albert cited and relied on, for example (G.C. Exh. 6), the document which he had received from the Employer ''that set forth the various conditions that they had prior to the Union coming in and was still in existence throughout the negotiations.'' Albert candidly acknowledged that certain specific contract language ''wasn't signed off, but it certainly was agreed to . . . we agreed to the same insurance benefits that was in existence at the time we negotiated the contract . . . .'' Albert explained, as he had in his letter to Bowling II on October 11 (Jt. Exh. 3), that he had left a ''blank space'' in section 5 of his agreement dealing with insurance ''carry over provisions'' for the Employer to fill in its ''current practice.'' Albert recalled: ''When we negotiated [the agreement] it was the same thing you had in effect [and] I didn't know whether you had a carry over or not.'' In addition, Albert candidly acknowledged that some of his attempted statements or restatements of the Employer's terms and conditions of employment and existing benefits contained ''mistakes'' or were included by ''mistake'' and these ''mistakes,'' having been ''called to [his] attention now,'' concededly ''should not have been included'' in his typed contract. Albert agreed, for example, ''that [one disputed item] was never called to my attention . . . if it was an error . . . I certainly would not'' have included the item. And, at the hearings, Bowling II for the first time challenged Albert's recollection of what was said on July 10, 1989, namely, that noneconomic proposals still on the table were withdrawn. Albert credibly denied Bowling II's assertion.

Counsel for Respondent argues in his posthearing brief that where was no ''meeting of the minds on all material terms'' and there is no ''obligation to sign the agreement when it is bubbling over with errors, omissions and additions . . . .[8] This contention is contrary to the credible evidence of record detailed above. An analysis of the disputed or questioned contract items makes it clear that no real dispute exists as to any substantial term and condition of employment and, further, had Respondent fulfilled its statutory obligation to assist the Union in preparing the written contract, these questioned items would have been readily resolved.

Thus, for example, Bowling II questioned in his November 1 letter Albert's use of the heading ''Management Clause'' instead of ''Management Rights'' in his written contract. Albert on November 21 agreed to this correction. Albert also agreed to correct a typo'' in section 13 of article XIV. Albert also acknowledged at the hearings that the inclusion of the introductory paragraph or preamble in his written contract was not initialed and thus mistakenly included. Albert explained: ''There was no question about it . . . if you want to eliminate it . . . we will eliminate it . . . .'' Tr. p. 137. Albert also acknowledged on November 21 that he had mistakenly omitted from his contact the words ''and holidays'' with respect to filing grievances in section 11 of article IV. Albert also acknowledged on November 21 and at the hearings that sections 10 and 14 of article XII are duplicates and section 14 should be omitted. (Tr. p. 114.)

In addition, Albert agreed to delete on November 21 and at the hearings sections 10 and 11 of article XIII. (Tr. pp. 114–115.) These were clerical errors or duplicates. Albert similarly acknowledged at the hearings that section 2 of article XV contained essentially duplicate statements and the first statement was the correct one. Tr. pp. 115 to 117. Earlier, on November 21, Albert had explained to Bowling II that section 2 in fact had been agreed to by the parties. Albert also acknowledged on November 21 and at the hearings that section 11 of article XIX pertaining to safety rules was omitted by oversight. (Tr. p. 118.)

Further, Albert also acknowledged on November 21 and at the hearings that the holidays listed by Bowling II in article XXXIII were correct and sections 3 and 8 were essentially duplicates with section 8 being deleted. (Tr. pp. 119 to 121.) Albert also acknowledged on November 21 and at the hearings that vacations in section 1 of article XXXIV should read as stated by Bowling II. Albert, however, wanted Bowling II to complete his vacation schedule to 20 years. Albert was relying on the material furnished to him by the Employer in attempting to restate this existing benefit. It is undisputed that there would be no change in this benefit. Albert also acknowledged on November 21 and at the hearings with respect to restating the existing insurance benefits in articles XXXVI to XXXVIII that he had relied on the Employer's benefit booklets and his understanding of Federal law with respect to carry over provisions. Admittedly, these attempted restatements of existing benefits were not initialed by the parties. Albert unsuccessfully had sought the assistance of Bowling II in this endeavor and left some blank spaces in his contract for Bowling II to restate existing carry over practices if any. Albert on November 21 and at the hearings readily agreed to accept Bowling II's language pertaining to these and related benefits. Albert explained: ''If there is no carry over provisions, whatever the existing agreement calls for, . . . that's what I agreed to . . . .'' (Tr. pp. 125, 144.)

[8] Counsel for General Counsel's motion to strike counsel for Respondent's posthearing brief because it was filed late is denied.

In sum, Albert was simply asking the Employer to restate whatever its existing benefit policy was.[9]

Finally, with respect to schedules A and B of Albert's written contract, Albert acknowledged on November 21 and at the hearings that the wage rates stated by Bowling II in schedule A were correct and the ''preamble'' language, although agreed to in principle, should be deleted because it was not initialed. (Tr. p. 137.) Further, Albert explained to Bowling II on November 21 that the agreement with respect to schedule B is noted in his ''attachment 4.'' At the hearings, Albert was apprised by Bowling II of an error in language in section 1 of schedule B pertaining to overtime distribution. Albert credibly testified:

> Resp. Exh. 1 is correct and it was error on my part . . . I didn't see that the parties agree[d] to section 1. The secretary made an error and it should be section 1 of your exhibit. . . . I included something that was signed, initialed here and there is a little notation over here on the side that was missed. It's not of any significance anyway because it's almost the same language. [Tr. pp. 139 to 140.]

In conclusion, as stated in *Georgia Kraft Co.*, supra,

> Respondent was clearly obligated to assist the Union in reducing the agreement to writing and to thereupon execute such agreement. . . . A review of [Albert's] document reflects some minor deviation from the proposals submitted by Respondent and agreed to by the Union . . . . [A]ny such deviation is not indicative of a lack of agreement between the parties, but is rather the result of Respondent's own refusal to acknowledge the existence of an agreement as well as its refusal to assist the Union in reducing the agreement to writing . . . .

For, as made clear in *Fashion Furniture*, supra,

> The Board has found that such errors do not indicate a lack of agreement between the parties and the need for minor alterations in the agreement does not relieve the parties of the obligation to execute the contract agreed to particularly where as here the other party indicates a willingness to make such alterations . . . .

On November 1,1989, Bowling II apprised Albert that the Employer would not execute Albert's written contract containing the agreed-upon and effective union-security clause. Bowling II further apprised Albert that the Employer, also contrary to its agreement, wanted a 1-year and not a 3-year term contract. The Employer predicated this demand on a decertification petition filed in July 1989, during the certification period. The certification year, as Respondent had agreed in settlement of the earlier unfair labor practice proceeding, had been extended to November 1, 1989. Respondent, about this same time, was refusing to send to the Union dues deducted from employees' wages after they had executed deduction authorizations. Respondent deposited these deducted dues into its ''payroll account.'' Respondent's conduct was in clear derogation of its bargaining obligation. As stated in *United Supermarkets*, supra,

> We believe that just as the petition could not raise a question concerning representation nor be acted on by the Respondent within the certification year, Respondent cannot subsequently rely on it to justify a more timely withdrawal of recognition. . . . More significant, however, than the untimeliness of the decertification petition is the fact that the underlying expression of support was itself unreliable as an indicator of uncoerced employee sentiment because it arose during the time when Respondent had not yet fully remedied its many unfair labor practices . . . .

Thus, Respondent, having agreed to the terms and conditions of a collective-bargaining agreement, could not thereafter rely on an earlier untimely decertification petition in the context of its unremedied refusal to bargain, as justification for refusing to sign the written contract.

Likewise, the Employer's December 14, 1989 withdrawal of recognition from the Union also runs afoul of its statutory bargaining obligation. The Employer was relying on a second withdrawal petition filed in November on the heels of the expiration of the certification year. Owner Skelley, in his testimony, cited this second petition from the employees (R. Exh. 13) in support of his ''decision'' ''not to continue to recognize the Union.'' Clearly, in view of the above unremedied unfair labor practices, the Employer could not question the Union's majority status. Respondent Employer has violated Section 8(a)(1) and (5) and Section 8(d) of the Act as alleged.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce as alleged.
2. Charging Party Union is a labor organization as alleged.
3. Respondent violated Sections 8(a)(1) and (5) and 8(d) of the Act by failing and refusing to bargain in good faith with the Union as the exclusive bargaining agent of its employees in an appropriate unit, as described below, by failing and refusing since about November 1, 1989, to execute a written contract embodying the full and complete agreement previously reached by the parties on or about July 10, 1989, with respect to the terms and conditions of employment of its unit employees; by abrogating and refusing since about November 1, 1989, to abide by all the terms and conditions of this agreement by refusing to comply with the provisions pertaining to ''Union security'' and ''termination of agreement''; and by failing and refusing since about December 14, 1989, to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees. The appropriate unit includes:

> All full time and regular part time production and maintenance employees including leadmen and field service personnel employed at the Respondent's New Kensington, Pennsylvania facility, excluding all salesmen, salaried employees, draftsmen and clerical employees, as well as guards, professional employees and supervisors as defined in the Act.

4. The unfair labor practices found above affect commerce.

[9] See also Tr. pp. 130 to 134, where Albert acknowledged further errors in attempting to restate existing benefits. These additional errors were apparently first cited to Albert at the hearings.

REMEDY

To remedy the unfair labor practices found above, Respondent Employer will be directed to cease and desist from engaging in such unlawful conduct and like or related conduct and to post the attached notice. Respondent Employer will be directed to execute the written collective-bargaining contract as requested by the Union on October 11, 1989, with the correction of inadvertent errors as acknowledged by the Union in its letter of November 21, 1989, and at the hearings in this proceeding, and abide by its terms retroactively to its effective date of July 31, 1989. Respondent Employer will make whole the unit employees and the Union for losses, if any, which they may have suffered by Respondent's refusal to sign the agreement, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Specifically, as provided in *Ogle*, supra, Respondent Employer will be directed to reimburse the Union for the dues which Respondent unlawfully failed to withhold and/or transmit in accordance with checkoff provisions of the contract, limited, however, to reimbursement only for those employees who had signed dues deduction authorizations. Respondent Employer will be directed to, on request, bargain in good faith with the Union as the exclusive bargaining agent of the employees in the appropriate unit and if an understanding is reached embody that understanding in a signed agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, Cannon Boiler Works, Inc., New Kensington, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the Union, Aluminum, Brick And Glass Workers International Union, AFL–CIO–CLC as the exclusive bargaining agent of its employees in the following appropriate unit, with respect to rates of pay, wages, hours, and other terms and conditions of employment, by failing and refusing since about November 1, 1989 to execute a written contract embodying the full and complete agreement previously reached by the parties on or about July 10, 1989, with respect to the terms and conditions of employment of its unit employees; by abrogating and refusing since about November 1, 1989, to abide by all the terms and conditions of this agreement by refusing to comply with the provisions pertaining to ''Union security'' and ''termination of agreement''; and by failing and refusing since about December 14, 1989, to recognize and bargain with the Union as the exclusive bargaining representative of the unit employees. The appropriate unit includes:

> All full time and regular part time production and maintenance employees including leadmen and field service personnel employed at the Respondent's New Kensington, Pennsylvania facility, excluding all salesmen, salaried employees, draftsmen and clerical employees, as well as guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

(a) Execute the written collective-bargaining contract as requested by the Union on October 11, 1989, with the correction of inadvertent errors as acknowledged by the Union in its letter of November 21, 1989, and at the hearings in this proceeding, and abide by its terms retroactively to its effective date of July 31, 1989.

(b) Make whole the unit employees and the Union for losses, if any, which they may have suffered by Respondent's refusal to sign the agreement, with interest, as provided in this Decision.

(c) Reimburse the Union, with interest, for the dues which Respondent unlawfully failed to withhold and/or transmit in accordance with checkoff provisions of the contract, limited, however, to reimbursement only for those employees who had signed dues deduction authorizations.

(d) On request, bargain in good faith with the Union as the exclusive bargaining agent of the employees in the appropriate unit and if an understanding is reached embody that understanding in a signed agreement.

(e) Post at its facilities in New Kensington, Pennsylvania, copies of the attached notice marked ''Appendix.''[11] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board hag found that we have violated the National Labor Relations Act and hag ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Union, Aluminum, Brick And Glass Workers International Union, AFL–CIO–CLC as the exclusive bargaining agent of our employees in the following ap-

propriate unit, with respect to rates of pay, wages, hours, and other terms and conditions of employment, by failing and refusing since about November 1, 1989 to execute a written contract embodying the full and complete agreement previously reached by the parties on or about July 10, 1989, with respect to the terms and conditions of employment of our unit employees; by abrogating and refusing since about November 1, 1989, to abide by all the terms and conditions of this agreement by refusing to comply with the provisions pertaining to ''Union security'' and ''termination of agreement''; and by failing and refusing since about December 14, 1989, to recognize and bargain with the Union as the exclusive bargaining representative of our unit employees. The appropriate unit includes:

> All full time and regular part time production and maintenance employees including leadmen and field service personnel employed at the Respondent's New Kensington, Pennsylvania facility, excluding all salesmen, salaried employees, draftsmen and clerical employees, as well as guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act.

WE WILL execute the written collective-bargaining contract as requested by the Union on October 11, 1989, with the correction of inadvertent errors as acknowledged by the Union in its letter of November 21, 1989, and at the hearings before the Board in this proceeding, and abide by its terms retroactively to its effective date of July 31, 1989.

WE WILL make whole our unit employees and the Union for losses, if any, which they may have suffered by our refusal to sign the agreement, with interest, as provided in the Board's Decision.

WE WILL reimburse the Union, with interest, for the dues which we unlawfully failed to withhold and/or transmit in accordance with checkoff provisions of the contract, limited, however, to reimbursement only for those employees who had signed dues deduction authorizations.

WE WILL on request bargain in good faith with the Union as the exclusive bargaining agent of our employees in the appropriate unit and if an understanding is reached embody that understanding in a signed agreement.

CANNON BOILER WORKS, INC.